3235

SUPREME COURT OF THE UNITED STATES.

No. 102.

CHARLES M'MICKEN, APPELLANT,

v.

FRANKLIN PERIN.

APPEAL FROM THE CIRCUIT COURT UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

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Circuit Court of the United States, Fifth Judicial Circuit, and Eastern District of Louisiana.

FRANKLIN PERIN
v.
CHARLES MCMICKEN. } No. 2003.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of February, A. D. 1851, came Franklin Perin, in proper person, and filed, in the Clerk's Office of the said Court, a Bill of Complaint, in words and figures following:

Bill. Filed 27 *Feb'y*, 1851.

To the Honorable the Judges of the Circuit Court of the United States, for the Fifth and Eastern District of Louisiana, in Chancery sitting:

Franklin Perin, who is a resident of the Parish of East Baton Rouge, and a citizen of the State of Louisiana, brings this his bill complaint against Charles McMicken, who is a resident of the City of Cincinnati, and a citizen of the State of Ohio.

And thereupon your orator complains, and says, that on the twenty-eighth day of November, A. D. eighteen hundred and forty-four, he was engaged (in connection with P. Soulé) as attorney-at-law and agent in fact by F. Fletcher and others, heirs of the late James Fletcher, to prosecute, among others, a suit in their favor against John Davenport, to recover the undivided three fourth parts of all that parcel of land or plantation, with the improvements thereon, situated in the Parish of East Baton Rouge, in the State of Louisiana, on the east bank of the Mississippi River, bounded above by lands now belonging to Milleand Rouzan, and below by lands formerly belonging to the heirs of Neilson, containing twenty arpents front on said river, by eighty arpents in depth, the whole of which plantation, consisting of twenty arpents front and eighty deep, having since been divided by suit for partition between the said McMicken and John Davenport, heirs, and others, owners of one undivided fourth part, by taking one fourth part of the same off the upper side. And that by the terms of agreement, by which the complainant was engaged by the said Fletchers, he was fully and lawfully invested with an equitable interest in and to one-half of the property claimed by the said Fletchers as herein above described, as will appear by reference to Exhibit A herewith filed, being an agreement in writing with Arrangois, the agent of said Fletchers, signed on the 28th of November, 1844, with the renunciation of P. Soulé made thereon in favor of complainant, on the 30th of April, 1846.

And your orator further shows unto your honors, that he pro-

ceeded in the prosecution of the Fletchers' claims to said property in the Circuit Court of the United States for this State and District; but, before judgment could be obtained, the said Fletchers proposed and offered to sell to complainant all their right, title, interest, and claim in and to the said property and to the suit of F. Fletcher and others *v.* John Davenport, No. 1320, on the law docket of said Court, as will appear by reference to the letter of T. Corral, dated Vera Cruz, July 22d, 1847, marked Exhibit B. That although complainant advised said Fletchers not to sell, but to wait till said plantation be recovered, yet they insisted on selling their said interest for five thousand dollars, if sold to complainant, and for ten thousand dollars if sold to a stranger. That complainant being apprehensive that his clients, the said Fletchers, might sell their said interests, and sacrifice or impair the rights of complainant in said suit and property, and being unable to raise five thousand dollars to purchase the said Fletchers' interest without the aid of others, in the spring of 1848 applied to the defendant, McMicken, who is esteemed of great wealth, for the loan of the said sum of five thousand dollars. That the said McMicken promised complainant to loan him the said sum whenever the said suit, No. 1320, should get into a position to make it a safe transaction, and to authorize him in loaning the said money, as will appear by letters afterwards written by said defendant to the complainant, dated at the residence of the defendant, on the 11th of May and the 8th of September, 1848, and marked Exhibits C and D. That the complainant had often been assisted in his pecuniary matters by the said McMicken, and had received promises from him to aid complainant whenever he could do so prudently, and that complainant was on such terms of relationship and friendship with defendant that he put full faith and confidence in his said promises. And your orator further shows, that he obtained final judgment in said suit, No. 1320, against the heirs of the said John Davenport in June, 1848, by which the said property was decreed to belong to the said Fletchers, as will appear by reference to the record in the said suit; and that, notwithstanding the said judgment, the said Fletchers persisted in their offer to sell their interest in the judgment, and in the property herein-above described, for five thousand dollars, to complainant, or for ten thousand dollars to any other person, as will appear by reference to a letter from T. Corral, one of the heirs and agent for the others, dated Hacotalpane, 1st July, 1848, marked Exhibit E, and that all the facts as set forth hereinabove were well known to the defendant long before the 19th October, 1848.

That upon the said proposition being renewed, the complainant addressed divers letters to the defendant asking for a loan of the said five thousand dollars for the purpose of purchasing the said interest of the Fletchers in and to the said property; and that in reply to the complainant's said letters the said defendant answered in writing giving a promise of said loan, and advising the complainant how to

proceed in obtaining the Fletchers' titles to their said interest, as will appear by reference to the said Exhibits C and D, and other proofs to be hereafter produced in this cause.

And your orator further shows unto your honors, that, relying on the promises of and honesty of the defendant, and upon the understanding and agreement with him, the complainant purchased the said property of the said Fletchers on the nineteenth day of October, eighteen hundred and forty-eight, while the defendant was absent in Cincinnati; and in order to secure the said McMicken in the loan of the said five thousand dollars, the complainant caused the title to the said property to be made out in the name of the defendant, with the express condition that the purchase was made in the name of the defendant for the use and benefit of complainant, all of which will appear by reference to the act of sale, marked Exhibit F, to the letter of the complainant to the defendant, dated on the 19th of October, 1848, accompanying a copy of the act of sale sent to the defendant, marked Exhibit G, and other proofs to be hereafter exhibited. That the said defendant accepted the said sale, paid the five thousand dollars to the Fletchers, and took the said property, which is fully worth forty-five thousand dollars, and held the same in trust for the use of complainant, and upon no other conditions or understanding, subject only to the repayment to said defendant of all sums advanced in the purchase of the said property, to wit, five thousand and fifty dollars, with interest from the date of the payment or advancement thereof (that is, in January, 1849), till repaid by complainant.

Your orator further shows unto your honors, that, being so invested with all these equitable rights, title, interest, and claim of the Fletchers in and to the said property, as set forth above, he tendered to said defendant, immediately after his ratification of the said sale, the said sum of five thousand and fifty dollars, with the proper interest due thereon, and demanded of the said defendant a conveyance to the complainant of all the said property and rights so purchased and held in trust as above stated, which the defendant wholly refused to do.

And your orator further shows, that the said defendant, contriving how to defraud and cheat the complainant out of the said property, so held by him in trust as aforesaid, gave out and pretended, that he, the defendant, had purchased one half of the said property for the wife of the complainant (who is a niece of the defendant), and the other half for himself; and again, he would pretend that complainant was incapable of managing his own property, and that defendant would take care of it for him. Whereas, your orator avers, and charges the said pretences to be false and fraudulent, and that the complainant purchased the said property from the said Fletchers' in the name of the defendant, but for the use and in trust for complainant. And your orator further shows unto your honors, that the de-

fendant pretends that he is not bound to convey the said property to the complainant, or any part thereof, because, he says, that in February, 1849, he made an act of donation inter vivos, or a bond to Mrs. Mary McMicken, wife of the complainant, by which he agreed to give her one-half the proceeds of the sale of the said property, when the same should be sold, deducting certain amounts of money, which defendant alleges was due him by complainant, and any other sums which defendant might thereafter pay to the creditors of the complainant, and because he pretended that complainant had surrendered his rights by giving up a draft for $5050, which he alleged, represented plaintiff's interests in the said property. Whereas, your orator charges that the said bond or act of donation, was wholly void, and without any effect whatever, and avers, as the grounds of nullity: 1st. That the said bond or act was made without consideration, and without the requisite formalities of law. 2d. The debts of the complainant, mentioned in said bond, were never paid by defendant, a condition without the solemn promise of the fulfilment of which the complainant never would have surrendered the said draft. 3d. It was made and received without the proper authorization of the complainant, he being no party thereto, and that it never would have been acquiesced in for a moment, but for the promise made by the defendant, at the time of taking the said bond or act, that he would pay the debts of complainant, and which he never did pay. Your orator further charges, that the said bond or act was taken back by said defendant on the 5th March, 1850, and a new bond or act given to the said Mrs. Perin, similar in form and substance to the first bond, with the exception that no mention is made in the second bond of the name of the complainants' creditors, which will appear by reference to the said act or bond herewith filed, and marked Exhibit H. Your orator charges, that the said second bond is null and void for the same reasons as stated against the first, as far as the same will apply. Your orator avers and charges, that his rights and interests to the said property are in no manner affected by either of the said bonds, that they are mere pretexts for the defendant to defraud and cheat complainant out of his said property; that the complainant only submitted to the defendant's pretensions, because defendant promised to pay his debts (which he wholly failed to do); and because he believed he was without remedy, and felt reluctant to thwart the defendant's wishes, or oppose him even in his fraudulent and illegal designs on complainant.

Your orator further charges, that since he has been informed that said bonds are null, and that he has recourse in equity against the defendant, he has made repeated demands of the defendant to deliver up his said property, and convey the same to complainant, and that the defendant has always refused so to do.

All which actings, refusals, and pretences, are contrary to equity

and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and inasmuch as your orator is without relief by the course of the common law, and can only have plain and adequate relief in a Court of equity—to the end, therefore, that the said Charles McMicken may, if he can, show cause why your orator should not have the relief humbly prayed, and may, upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers to the several matters and things set forth in this bill, and especially to such of the interrogatories hereinafter numbered, and set forth, as by the note hereunto written, he is required to answer—that is to say:—

Interrogatory 1st. Whether you, the said McMicken, did not receive letters from the complainant dated, one at Bluegrass, Iowa, August 25th, 1848; one at St. Louis, September 25th, 1848; one on the "Old Hickory," near Cairo, September 30th, 1848; one at New Orleans, October 12th, 1848; and one at New Orleans, October 19th, 1848; referring to the Fletchers' and complainant's interests in the said property, asking you for the loan of money to purchase said property, and informing you of the purchase of the said property from the Fletchers', in your name, for the complainant's use? and whether you did not answer the same in writing? If you answer yea to this interrogatory, you will please annex to your answers all the letters which you have received from the complainant on the subject of which you are interrogated, and especially those of the above dates.

Interrogatory 2d. Whether you did not receive a letter from complainant, of date New Orleans, March 23d, 1850; and one dated April 21st, 1850; and another April 26th, 1850; making demand of you for the restitution and conveyance of the said property to complainant? If you answer yea, you will please annex to your answer the original and entire letters so received.

And your orator further prays, that by the order and decree of this honorable Court, your orator may be decreed to be justly and equitably entitled to the said property described in this bill, and that the defendant may, by the order and decree of the Court, be held and declared to be trustee for your orator, to the property described in this bill, and that he may be ordered and decreed to convey the same to your orator, upon the payment or tender to the said defendant, of the advances made by defendant to complainant, for the purchase of the said property. And for such other or such further relief in the premises as to your honors may seem meet, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable Court, directed to the said Charles McMicken, commanding him, by a certain day, and under a certain penalty therein to be inserted, person-

ally to be and appear in this honorable Court, then and there to answer the premises, and to stand to and abide by, and perform such order and decree in the premises, as to your honors shall seem meet.

And your orator will ever pray, &c.

F. PERIN.

Note. The defendant is required to answer the interrogatories numbered one and two.

Exhibit A, to Bill.

Power of Attorney from F. De Arrangoez to Soulé and Perin.

United States of America. State of Louisiana. City of New Orleans.

Be it remembered, that this day, the first of the month of May, in the year eighteen hundred and forty-six, and in the seventieth year of the Independence of the United States of America,

Before me, Herman Lucas, a notary public, in and for this city and parish of New Orleans, duly commissioned and sworn, and in the presence of the hereinafter named and undersigned witness,

Personally came and appeared, Franklin Perin, Esquire, residing in the City of Lafayette and Parish of Jefferson, in this State. Who produced and exhibited unto me, notary, a certain original document under private signature, written in the English language, and purporting to be an act of substitution of a power of attorney, granted by Francisco de Arrangoez of this city, in favor of him this said appearer, under date of the twenty-eighth day of November, eighteen hundred and forty-four.

Whereupon the said Franklin Perin having required of me, notary, to make record of said document, I have, at his request, deposited the same in this my current Notarial Register, by annexing it to the margin thereof, there to remain for recourse as occasion or need shall or may require.

Thus done and passed at my office, in the said City of New Orleans, on the day, month, and year hereinbefore first written, in the presence of Messieurs Benjamin Similien and Edward F. Parker, witnesses, residing in this city, who have hereunto signed their names with said appearer, and me, notary.

Signed: Franklin Perin, B. Similien, Edward T. Parker, and H. Lucas, Not. Pub.

I certify the foregoing to be a true copy of the original act, on record in my office. In faith whereof I have granted these presents under my signature and the impress of my seal of office, at the City of New Orleans, this sixth May, 1846.

[SEAL.] (Signed) H. LUCAS,
Not. Pub.

Article of agreement made and entered into by and between Felicitas Fletcher Hipp, of Vera Cruz, Mexico, and Maria Antonia Fletcher Hipp, of Cadiz, Spain, by their agent and attorney in fact, Francisco de Arrangoez of the first part, and P. Soulé and F. Perin of New Orleans, Louisiana, of the second part. Witnesses:

That the parties of the first part hereby constitute, nominate, and appoint the said Soulé and Perin their true and lawful attorneys-at-law and fact, to represent them in all matters and things pertaining to their rights to personal and real property in the State of Louisiana and in the United States; to make all amicable and legal demands for any such property belonging or of right appertaining to the parties of the first part, by purchase or as heirs or legatees of the late James Fletcher; to sue for and recover the same; to make compromises at the discretion of the parties of the second part, to receive money therefor, or in any otherwise due or owing to the parties as aforesaid; to give the necessary acquittances, and in general, to do and perform all matters and things fully and in the same manner as the said parties would or could do, if personally present; hereby revoking and annulling all powers and delegations heretofore at any time given or granted to any or all persons by them, except the powers to their said agent Arrangoez; and authorizing and confirming the acts of the said Soulé and Perin in the premises. The parties of the first part, further stipulate and agree to give to the said Soulé and Perin the exclusive management and control of all such matters as are hereinbefore expressed, and particularly their claims as heirs or legatees to their property, personal and real, in the Parish of New Orleans; to a certain plantation in East Baton Rouge, embraced in the suit of Fletcher's heirs *v.* Executors of Cavalier et al., reported in the 4th and 10th vols. of La. Rep.; to five plantations in the Parish of Iberville, and all other property belonging to them in the State of Louisiana and Mississippi; and as a compensation for the time, expense, and services of the said Soulé and Perin in the premises, they bind themselves to give to their said attorneys a commission of fifty per cent. on the value in money, or a fee equal to one half the net value of all the said property, real and personal, after the same shall have been recovered, or in proportion as any part thereof shall be recovered, hereby acknowledging that the legal services heretofore rendered, and the expenses incurred by the said Soulé and Perin, at the request and for the use of the first parties in the premises, form a good and sufficient consideration for the above obligation.

And the said Soulé and Perin, of the second part, hereby promise and agree to proceed in the execution of the powers herein granted by the parties of the first part, according to law and to the best of their abilities; hereby reserving the right to the said P. Soulé to decline in favor of the said F. Perin, all participation of

the first parties' claims to the Cavalier Plantation in East Baton Rouge, and to render a full and satisfactory account of their acts and doings in the premises, when thereto requested by the parties of the first part; herein stipulating and agreeing that in case no recovery can be had in the premises, the parties of the first part shall not be liable for any expenses incident thereto.

In testimony whereof, the parties hereto have set their hands and seals, on the 28th day of November, A. D. 1844.

Signed in triplicate. [SEAL.] F. DE ARRANGOEZ,
[SEAL.] P. SOULE,
[SEAL.] F. PERIN.

I, the undersigned, at the same time and place, hereby substitute all the power given me by Augustin Cuesta, Javiera Cuesta, and Felicitas Cuesta, to the said Soulé and Perin, which powers were given me on the 24th July, A. D. 1844, upon the same terms and conditions as are contained in the above agreement.

[SEAL.] (Signed) F. DE ARRANGOEZ.
Witness: P. CHAS. CUVELLIER.

I hereby renounce all participation and control of the plantation in East Baton Rouge (mentioned hereinabove) in favor of said Franklin Perin, this April 30th, 1846.

(Signed) P. SOULE.

State of Louisiana, City of New Orleans:

Be it known, that this day, the first of the month of May, eighteen hundred and forty-six, and in the seventieth year of the Independence of the United States of America, before me, Herman Lucas, a Notary Public, in and for this City and Parish of New Orleans, duly commissioned and sworn, personally came and appeared Pierre Charles Cuvellier, the above-named witness, and Augustin Capdevielle, residing in this city, who having been duly sworn by me, notary, to declare the truth, deposed that the signature of F. de Arrangoez, who has signed the foregoing instruments of writing, is genuine, for having several times seen him sign, and that full faith and credit should be granted to the same.

In faith whereof, said appearers have hereunto signed their names; and I, notary, have granted these presents under my signature and the impress of my seal of office, at the City of New Orleans, on the day, month, and year hereinbefore first written.

(Signed) P. CHS. CUVELLIER,
(Signed) A. CAPDEVIELLE.
[SEAL.] (Signed) H. LUCAS,
Not. Pub.

I certify the foregoing to be a true copy of an original act of substitution of power deposited, on the first day of May instant, in my office. In faith whereof, I have granted these presents, under my signature and seal of office, at New Orleans, this sixth day of May, 1846.

[SEAL.] (Signed) H. LUCAS,
Not. Pub.

State of Louisiana, Parish of East Baton Rouge.

Recorder's Office.

I hereby certify that the foregoing instrument of writing, was this day duly recorded in my office, in Book B, folio 223, Notarial Acts.

[SEAL.] Witness my hand and seal of office, at Baton Rouge, 11th of October, 1848.

(Signed) SAM. SKOLFIELD,
Recorder.

Exhibit F, filed by Complainant.

Sale of a Suit and Landed Property to Cha's M'Micken.

Know all men by these presents, That we, the undersigned, to wit, Maria Antonia Fletcher, of Spain, Felicite Fletcher, of Vera Cruz, Mexico, and Augustin Cuesta, Javiera Cuesta y Fletcher, and her husband, Casto Fernandez, and Felicitas Cuesta y Fletcher, and her husband, José Desedario Herrera, the three Cuestas being the legitimate children and heirs of Adelayde Fletcher, deceased, residing in Mexico, through their agents and attorneys in fact, Othon L. Dabelsteen, Vice-Consul of Mexico for the City of New Orleans, and Bernardo Turpin, both residing in said City of New Orleans, hereby assign, transfer, sell, and deliver unto Charles McMicken, of Cincinnati, Ohio, all their right, title, interest, and claim in and to a suit instituted in the United States Circuit Court, for the Fifth Circuit and Eastern District of Louisiana, in which the present vendors are plaintiffs, and the heirs of John Davenport, dec'd, are defendants, being number 1320 on the law docket of the said Court, together with the judgments that have been and which may be hereafter rendered in said cause. The vendors above-named hereby grant, bargain, transfer, alienate, sell, convey, and deliver unto the said Charles McMicken, with all lawful warranties, three undivided fourth parts of all that tract or parcel of land situated on the east side of the Mississippi River, in the Parish of East Baton Rouge, State of Louisiana, about fourteen miles below the town of Baton Rouge, containing twenty arpents, more or less, front on the Mississippi River, with the depth

of eighty arpents, more or less, bounded on the upper line by lands formerly belonging to Josiah Barker, and on the lower line by lands formerly belonging to Neilson's heirs, being the same property which the vendors recovered from Cuvallier and others in the State District Court for the Parish of East Baton Rouge, in eighteen hundred and thirty-four (1834), and from the Davenports in the suit first above-mentioned, together with the buildings and improvements thereon, and all the privileges and rights of action thereunto belonging or in any wise appertaining.

To have and to hold the said tract of land and improvements thereon, and all the rights, title, and interest to the said claims unto the said purchaser, his heirs and assigns forever.

This sale of the said land and claims, as above set forth, is made for the price and consideration of ten thousand and one hundred dollars, which the said vendors hereby acknowledge to have received from the said Charles McMicken through their said agents and attorneys in fact, O. L. Dabelsteen and B. Turpin, in manner following, to wit, two drafts, dated herewith, drawn on and directed to the said Charles McMicken, at Cincinnati, Ohio, for five thousand and fifty dollars each, payable at said City of Cincinnati at thirty days from sight, to the order of said Othon L. Dabelsteen, and bearing eight per cent. per annum interest, from date till paid, the said drafts, to identify them herewith, are paraphed "*Ne Varietur*" by the notary in whose notarial record this act of sale is filed.

And to secure the punctual payment of the aforesaid drafts at their maturity, a special mortgage, in favor of the said vendors, is hereby retained on the said tract of land.

The certificate of the Recorder of Mortgages for the Parish of East Baton Rouge, is hereby dispensed with by the purchaser.

The said Othon L. Dabelsteen declares that he is herein acting under by virtue of certain powers of attorney from the said Maria Antonia Fletcher, Augustin Cuesta, Javiera Cuesta and Fletcher, and her husband Fernandez, and Felicitas Cuesta y Fletcher and her husband Herrero, in favor of Francisco de Arrangoez, and in his absence, of the said Dabelsteen (the said Arrangoez now being absent from the State of Louisiana), filed by the said Dabelsteen in the office of Louis T. Caire, Notary Public of New Orleans, on the 18th of February; that the said B. Turpin is herein acting under powers from said Felicite Fletcher to Thomas Corral, by act passed before said L. T. Caire, on the 4th day of June, 1844, and from said Corral to said B. Turpin by public act, of date, Vera Cruz, March 18th, 1848, and filed in the office of said L. T. Caire on the day bearing date herewith, hereby selling and transferring to said purchaser all the right, title, or interest, which the said Corral may have in and to the said land and claim.

In testimony whereof, the above-named vendors and their said agents have hereunto set their hands, on this the nineteenth day of

October, in the year of our Lord eighteen hundred and forty-eight, New Orleans.

(Signed) MARIA ANTONIA FLETCHER,
" AUGUSTIN CUESTA,
" JAVIERA CUESTA Y FLETCHER,
" CASTRO FERNANDEZ,
" FELICITAS CUESTA Y FLETCHER,
" JOSE DESIDERIO HERRERA,
" p. p. O. L. DABELSTEEN,
" FELICITE FLETCHER,
" THOMAS CORRAL,
" pr. pro BERNARD TURPIN,

Be it remembered, that this day, the nineteenth of the month of October, in the year of our Lord one thousand eight hundred and forty-eight, and the seventy-third of the Independence of the United States of America,

Personally appeared Messrs. Othon L. Dabelsteen, Vice-Consul of Mexico for the City of New Orleans, and Bernard Turpin, residing both in this city, persons to me well known, which appearers do hereby acknowledge the foregoing to be their act and the signatures of O. L. Dabelsteen and Bernard Turpin, in their respective capacity, to be their own signatures.

In faith whereof, I have hereunto set my name and affixed the seal of my office, in presence of M. M. Cy Courbe Ludreyere and Louis E. Laloni, witnesses thereto required, and residing in this city, the day, month, and year afore written.

(Signed) by Courbe Ludreyere and Louis E. Lalori; Louis T. Cuire, Notary Public. [SEAL.]

I do hereby certify the foregoing to be a true copy of the original extant in my annual register.

New Orleans, October 20th, 1848.

[SEAL.] LOUIS T. CUIRE,
Not. Pub.

State of Louisiana, Parish of East Baton Rouge.

RECORDER'S OFFICE.

Recorded in Book A, folio 233, "Register of Conveyances."

Witness my hand and seal of office, at Baton Rouge, October 21st, 1848.

[SEAL.] SAM. SKOLFIELD,
Recorder.

Recorded, Book A, fo. 263, Conventional Mortgages. Baton Rouge, 23d Oct., 1848.

SAM. SKOLFIELD,
Recorder.

Note. The exhibits referred to in the bill of complainant, as Exhibits, B, C, D, E, and G, have never been filed in the cause, and consequently no copies of them can be forwarded with this transcript.

(Attest) J. W. GURLEY,
Clerk.

Exhibit H, to Bill.

Bond from C. M'Micken, to Mary Perin.

Know all men by these presents, that I, Charles M'Micken, of Cincinnati, Ohio, for, and in consideration of the love and affection I entertain for my niece, Mary M'Micken, wife of Franklin Perin, at present in the City of New Orleans, and for other good and sufficient considerations, I hereby promise and agree to give and pay over to the said Mrs. Perin, one-half of the proceeds of the sale of the undivided fourth part all that tract or parcel of land situated on the east side of the Mississippi River, in the Parish of East Baton Rouge, Louisiana, about fourteen miles below the town of Baton Rouge, containing twenty arpents, more or less, front on the said river, by eighty arpents in depth, bounded above by lands belonging to Mille and Rouzan, and below, by lands formerly belonging to the heirs of Neilson..

Also one-half of whatever I may realize from a judgment, rendered in and by the Circuit Court of the United States, for the Fifth Circuit and District of Louisiana, in a cause known on the law docket of said Court, as F. Fletcher, et als. *v.* the heirs of John Davenport, No. 1320, being the same property which I acquired by purchase from Feliciti Fletcher, Maria Antonia Fletcher, Augustin Cuesta, Javierra Cuesta, and Feliciti Cuesta y Fletcher, by act filed in the current register of Lewis T. Caire, Notary Public of New Orleans, on the 19th of October, 1848, and recorded in the office of the Register of Conveyances, for the Parish of East Baton Rouge, on the 21st of October, 1848; and also from Ambrose Carpenter, by deed, of date, January, 26th, 1849, recorded in the said office of the Register of Conveyances, on the 31st of January, 1849. Subject, however, to a deduction of the sum of seven thousand two hundred dollars (7,200), with interest, at the rate of eight per cent. per annum, from this date till paid.

In testimony whereof, I have hereunto set my hand at New Orleans, Louisiana, on this, the fifth day of March, eighteen hundred and fifty.

(Signed) C. McMICKEN.

Witness,
W. C. CARHART,
T. R. BIEDELMAN.

State of Louisiana, City and Parish of New Orleans.

Be it remembered, that on this, the fifth day of March, 1850, before me, the undersigned, personally came, and appeared the above-named Charles McMicken, who signed the above instrument of writing, and acknowledged the same as his voluntary act and deed, for the uses and purposes therein mentioned in my presence, and in the presence of the above-named witnesses, and also the erasure of one line and one word, was done in my presence.

(Signed) J. L. WINTER,
2d Justice of the Peace for the Parish of New Orleans.

Received, New Orleans, March 9th, 1850, of Charles McMicken, three hundred dollars in cash, also a note of hand of John Davis, for two hundred and eight dollars, making the sum of five hundred and eight dollars ($508), advanced F. Perin, on account of this obligation. And for any further sum or sums which be paid or advanced hereafter to the said Franklin Perin, or for his use, in liquidating his debts, or for any expenses that may arise in any suits at law connected therewith, or in any otherwise, or for any money that may be advanced to myself at any time, the same to be credited on this bond, with eight per cent. interest until paid, on any sums so advanced.

(Signed) MARY PERIN.

The original withdrawn by order of Court, and the above literal copy left in its stead.

F. PERIN.

New Orleans, April 13th, 1852.

U. S. Circuit Court, 5th Circuit and Eastern District, La.

A true copy from the original, April 13th, 1852.

Witness my hand and the seal of said Court.

J. W. GURLEY,
Clerk.

By W. CORNELIUS,
Deputy Clerk.

Subpœna in Chancery.

United States of America. The President of the United States to the Marshal for the Eastern District of Louisiana, greeting:

You are commanded to summon Charles McMicken, to appear before the honorable the Judges of the Fifth Judicial Circuit of the United States of America, at a Circuit Court, to be holden on the first Monday in April, 1851; then and there to answer a Bill in

Chancery, filed against him, wherein Franklin Perin is complainant, and said Charles McMicken is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 28th day of February, in the year of our Lord one thousand eight hundred and fifty-one, and the seventy-fifth year of American Independence.

[SEAL.] J. W. GURLEY,
Clerk.

By W. CORNELIUS,
Deputy Clerk.

The defendant is hereby notified, that he is required to enter his appearance in the Clerk's office of the United States Circuit Court, on or before the first Monday in April, 1851, otherwise the bill may be taken pro-confesso.

J. W. GURLEY,
Clerk.

By W. CORNELIUS,
Deputy Clerk.

Marshal's Return on Subpœna.

Rec'd 28th February, 1851. After diligent search and inquiry, the within named Charles McMicken could not be found.

N. W. BUTLER,
Deputy U. S. Marshal.

Filed 12 May, 1851.

J. W. GURLEY,
Clerk.

Minutes: December Term, 1851.

NEW ORLEANS, Tuesday, 13th April, 1852.

Present: Hon. T. H. McCaleb, District Judge.

F. PERIN
v.
C. MCMICKEN. } 2003.

On motion of complainant herein it is ordered that he have leave to withdraw from file, a certain bond filed with his bill, and marked Exhibit H, on leaving a certified copy thereof.

United States of America. The President of the United States to the Marshal for the Eastern District of Louisiana, Greeting:

You are hereby, as you have heretofore been commanded, to summon Charles McMicken to appear before the Honorable, the Judges of the Fifth Judicial Circuit of the United States of America, at a

Circuit Court to be holden on the first Monday in December, 1852, then and there to answer a Bill in Chancery, filed against him, —— wherein Franklin Perin is complainant, ——— and said Charles McMicken is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this 5th day of November, in the year of our Lord one thousand eight hundred and fifty-two, and the seventy-seventh year of American Independence.

J. W. GURLEY,
Clerk.

[SEAL.] By W. CORNELIUS,
Dep. Clerk.

The defendant is hereby notified that he is required to enter appearance in the Clerk's Office of the United States Circuit Court, on or before the 1st Monday in Dec'r, 1852, otherwise the Bill may be taken pro confesso.

J. W. GURLEY,
Clerk.

By W. CORNELIUS,
Deputy Clerk.

Marshal's Return on Alias.

Received, November 5th, A. D. 1852, and on the same day served copy of the within Subpœna in Chancery, on Charles McMicken, by handing the same to him in person, at New Orleans, and returned same day.

W. S. SCOTT,
U. S. Marshal.

By N. W. BUTLER,
D'y U. S. Marshal.

Minutes; December Term, 1852.

NEW ORLEANS, Saturday, 23 April, 1853.

Present: Hon. T. H. McCaleb, District Judge.

F. PERIN
v.
C. MCMICKEN. } 2093.

Decree Pro confesso.

On motion of complainant herein, and on his showing to the Court that the defendant, Charles McMicken, has been duly served with process of subpœna, and has failed to appear, or plead and answer to the bill of complaint herein filed against him, within the time pre-

scribed by the rules, it is ordered that a pro confesso be herein entered against him.

Minutes; April Term, A. D. 1854.

NEW ORLEANS, Wednesday, 21st June, 1854.

Present: Hon. J. A. Campbell, Presiding Judge.

F. PERIN
v.
C. MCMICKEN. } 2003.

Submission of Cause.

This cause was called for hearing, Smeley, Esq'r, appearing for complainant. The defendant not present, nor represented; whereupon the case was submitted to the Court, and taken under advisement.

Minutes; April Term, A. D. 1854.

NEW ORLEANS, Thursday, 22d June, 1854.

Present: Hon. J. A. Campbell, Presiding Judge.

F. PERIN
v.
C. MCMICKEN. } 2003.

Order referring Cause to Master.

This cause was submitted to the Court upon the bill and decree, pro confesso; and thereupon the bill is referred to the Clerk of this Court, to report the amount acknowledged to be due by the plaintiff to the defendant, and to report to the present term of this Court.

Report.

F. PERIN
v.
C. MCMICKEN. } 2003.

U. S. Circuit Court, Eastern District of Louisiana.

The undersigned, to whom the papers in this cause were referred, to ascertain the amount admitted by complainant to be due to the defendant, reports: that complainant acknowledges himself indebted in the sum of five thousand and fifty dollars, principal, $5,050 00
With interest thereon, amounting to 2,216 30

Total dollars, ... $7,266 30

The interest has been calculated at the rate of eight per cent. per

annum, and this from the first day of January, A. D. 1849, to this 25th day of June, 1854, by instruction of complainant.

Respectfully submitted,

J. W. GURLEY,
Cl'k.

(Endorsed): Filed 25 June, 1854. J. W. Gurley, Clerk.

Decree.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

April Term, A. D. 1854.

NEW ORLEANS, Tuesday, 27th June, 1854.

Court met pursuant to adjournment. Present: Hon. J. A. Campbell, Presiding Judge. Absent: T. H. McCaleb, District Judge.

FRANKLIN PERIN
v.
CHARLES MCMICKEN. } 2003.

The bill of complaint herein, having been referred to the Clerk of this Court, to ascertain the amount admitted to be due by the plaintiff to the defendant, and he *he* having reported to the Court on the subject of reference, it is now ordered, that the same be confirmed. And it is decreed, in conformity thereto, that the complainant, Franklin Perin, do, within six months from the date hereof, pay to the said defendant, Charles McMicken, the sum of seven thousand two hundred and sixty-six and thirty cents ($7,266 30), with interest thereon at the rate of eight per cent. per annum, from this date until paid; and it is further ordered, that on the payment of the said sum and interest by the complainant, the said defendant, Charles McMicken, shall forthwith convey to the complainant, Franklin Perin, all that property described and claimed in the bill of complaint, viz., the undivided three fourth parts of all that parcel of land or plantation, with the improvements thereon, situated in the Parish of East Baton Rouge, in the State of Louisiana, on the east bank of the Mississippi River, bounded above by lands now belonging to Mills & Rauzan, and below by lands formerly belonging to the heirs of Neilson, containing twenty arpents front on said river, by eighty arpents in depth; the whole of which plantation, consisting of twenty arpents front and eighty arpents deep, having since been divided, by suit for partition, between the said Chas. McMicken and John Davenport's heirs and others, owners of one undivided fourth part, by taking one-fourth part of the same off the upper side. And it is further decreed, that in default of the complainant's making the payment as aforesaid, to the said defendant, within the time specified, his right

of redemption of the said property shall be forever barred. And it is ordered, that complainant pay the costs of this suit.

Decree rendered 27th June, 1854; signed 3 July, 1854.

J. A. CAMPBELL,
Asso. Justice Supreme Court of the U. S.

Minutes; November Term, 1854.

NEW ORLEANS, Tuesday, 26 December, 1854.

Present: Hon. T. H. McCaleb, District Judge.

F. PERIN
v.
C. MCMICKEN. } 2003.

Order extending Term of Payment.

On motion of J. M. Smiley, Esq., of counsel for complainant, and on reading and filing the affidavit of complainant and the exhibits thereto annexed, it is ordered that complainant have an enlargement of time for the payment of the money decreed in this case on the 27th of June, 1854, for three months, from and after the date of this order, upon the payment of all costs, and the interest that may accrue up to final payment.

Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana.

FRANKLIN PERIN
v.
CHA'S MCMICKEN. } No. 2003.

Affidavit. Filed 26 *Dec'r*, 1854.

In Chancery: F. Perin, the complainant in the above entitled suit, being duly sworn, says, That on the sixth of October, 1854, he tendered to C. McMicken, the defendant, at his residence in Cincinnati, Ohio, the sum of seven thousand four hundred and thirty-six dollars, as set forth in the affidavit of Solomon Langdon, and affiant's letter to defendant thereto attached, for the purpose of satisfying the decree of the Court, rendered on the 27th June, 1854, and that the defendant refused to accept the same.

Affiant further states, that said McMicken resides in Cincinnati, and has not been in the State of Louisiana since said 27th June, 1854; that he is in the habit of coming to New Orleans once a year, and affiant has reason to expect and believes that defendant will be in the State within the next six months. Affiant is now willing and ready to pay the amount due defendant under the said decree, and has been since the said 27th of June, 1854, and will pay the same to

him when he is willing to accept it, or at such time and in such manner as the Court may direct.

(Signed) F. PERIN.

Sworn to, and subscribed before me, at New Orleans, this 22d Dec'r, 1854.

(Signed) J. W. GURLEY,
Clerk.

CHAS. MCMICKEN, Esq.,
Cincinnati, Ohio:

SIR: Mr. Solomon Langdon, of this city, will pay you on my account seven thousand four hundred and thirty-six dollars, being the amount due you, in principal and interest, for the $5050 you paid for me to Dabelsteen, agent of the Fletchers, in January, 1849, to assist me in paying for the purchase (on the 19th of October, 1848) of said Fletcher's interests in and to three undivided fourth parts of all that tract of land or plantation, with the improvements thereon, situated in the Parish of East Baton Rouge, State of Louisiana, on the east bank of the Mississippi, about fourteen miles below the town of Baton Rouge, bounded above by lands formerly belonging to Mille & Rouzan, and below by lands formerly belonging to the heirs of Neilson, containing twenty arpents front on said river, by eighty arpents in depth. The said sum of $7436 is to reimburse the amount of your said advances, and to release the said lands from all further claims by you, whether by mortgage, deed, decree, or otherwise. Rent will be charged you for the use of the said premises at the rate of twenty-four hundred dollars per annum, until I am put in possession of the same.

I am, very respectfully yours,
FRANKLIN PERIN.

CINCINNATI, Oct. 6th, 1854.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

FRANKLIN PERIN
v.
CHARLES MCMICKEN. } No. 2003.

In Chancery.

State of Ohio, City of Cincinnati, *ss.*

Be it remembered, that on this the seventh day of October, A. D. 1854, before me the undersigned, a Commissioner of the United States, duly commissioned and qualified to act as such, personally came and appeared Solomon Langdon, of the said city and State (and to me well known), who, first being duly sworn by me, did state upon his oath that, on the sixth day of the present month of October,

he offered to pay to Charles McMicken, defendant in the above-named suit, then present in Cincinnati, on account of Franklin Perin, the complainant, the sum of seven thousand four hundred and thirty-six dollars, and affiant did then and there make a lawful tender to the said McMicken of the sum aforesaid, on account of said Perin, and at the time and place last aforesaid, when the said tender was made, affiant delivered to said McMicken the original paper or writing, of which the foregoing letter from said Perin to said McMicken is a literal and true copy; that upon the offer to pay, and the tender as aforesaid, the said McMicken declined to accept the said sum, and stated to affiant that the said Perin owed him nothing. And further affiant saith not.

SOL. LANGDON.

Sworn to, and subscribed before me, at Cincinnati aforesaid, on the day and date first above written.

In witness whereof, I have hereunto set my hand and seal, on the day and date first above written.

SAM'L S. CARPENTER, [SEAL.]
U. S. Commissioner, D. O.

Protest, filed 6 *Feb'y*, 1855.

State of Louisiana, City of New Orleans.

Be it known, that on this second day of February, eighteen hundred and fifty-five, I, John G. Poindexter, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, went to the domicil of Mr. J. L. McGill, situate at number one hundred and twenty-seven, 127, on Julia St., in this city, at about half-past two o'clock, P.M., and there found Mr. Charles McMicken, of Cincinnati, Ohio, to whom, at the request of Mr. Franklin Perin, of this city, I then and there tendered and offered to pay for account of said Franklin Perin, in lawful coin of the United States, being in gold, the sum of seven thousand six hundred and twenty-six dollars and fifty-four cents, being the amount of principal and interest allowed the said Charles McMicken by a decree of the Circuit Court of the United States, for the fifth Circuit and Eastern District of Louisiana, dated June 27th, 1854, in the case of Franklin Perin *v.* Charles McMicken, No. 2003, in Chancery, on the docket of said Court.

That, upon the tender as aforesaid, the said Charles McMeicken refused to accept the same, and also, at the same time and place, I handed to the said Charles McMeickin a letter from the said Franklin Perin to him, bearing equal date herewith, which was received and by him read; true copies of the said decree rendered June 27th, 1854, and of the order of said Court extending the time for the pay-

ment of the said sum of money three months, dated Dec. 26th, 1854, were by me, notary, offered to the said Charles McMeicken, which he also refused to receive. True copies of which decree, letter, and order are hereunto annexed, and form a part of this act. Whereupon I, the said notary, have made this public instrument of the facts aforesaid, and give full faith and credit to the same.

Thus done and passed, in my office, at the said City of New Orleans, in the presence of William C. Day and Robert Mott, competent witnesses, residing in this city, who hereunto sign their names, together with me the said notary, the day, month, and year, first herein written.

Original signed, JOHN G. POINDEXTER,
Notary Public.
W. C. DAY,
R. MOTT.

I certify the foregoing to be a true copy of the original extant in my current register. In faith whereof, I grant these pre-
[SEAL.] sents under my signature, and the impress of my official seal, New Orleans, 5 Feb'y, 1855.

JOHN G. POINDEXTER,
Notary Public.

NEW ORLEANS, Feb. 2d, 1855.

CHARLES MCMEICKEN, ESQ.

SIR: Mr. John G. Poindexter, as my agent, will pay you the sum of seven thousand six hundred and twenty-six $\frac{54}{100}$ dollars, being amount of principal and interest allowed you by the decree of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, in a cause in which I am complainant and you are defendant, known on the docket of said Court as number 2003, in Chancery. The said decree was rendered on the 27th of June, 1854, and the time for the payment of the said money extended by the order of the said Court of the 26th of December, 1854, copies of which decree and order will be handed you with the money by the said Poindexter.

After the payment of the said money to you, you will please make conveyance of the premises described in said decree in pursuance of the terms thereof.

Original signed, FRANKLIN PERIN.

I certify the foregoing to be a true copy of the original letter extant in my current register.

In faith whereof I grant these presents under my signa-
[SEAL.] ture and the impress of my official seal.

New Orleans, February 5th, 1855.

JOHN G. POINDEXTER,
Notary Public.

Petition Filed 12 *Feb'y*, 1855.

CHARLES MCMICKEN
v.
FRANKLIN PERIN.

Fifth Circuit Court, U. S. Eastern District of Louisiana.

To the Honorable Theod. H. McCaleb, Judge of the Eastern District of Louisiana, administering the jurisdiction of said Circuit Court.

The petition of Charles McMicken, a citizen of Cincinnati, State of Ohio, represents that Franklin Perin instituted a suit by Bill in Chancery, in this honorable Court against your petitioner, 27th of Feb., 1851, to answer which petitioner was summoned by process on 6th November, 1852. Petitioner spoke to counsel to prepare his answer and defence, but soon after subpœna served, said Perin met with petitioner, and proposed terms of adjustment. The bill filed professed to be, to extract from petitioner a legal title to property therein described, and to which reference is herewith made for explanation.

Petitioner then utterly denied and now utterly denies holding said property in trust, as charged in said bill, and therefore answered Perin, that he had no adjustment to make of the matter. Perin then said he should push the case no further, but would leave it to petitioner's generosity to deal with the matter as he thought best, and left petitioner in full assuraace that the suit would be abandoned, and not further prosecuted, and hence petitioner made no further preparation for defence, and supposed the suit at an end; and never knew any decree had been taken against him, till the 24th day of January, 1855.

On subsequent examination, petitioner has learned that said bill was not dismissed, but that a pro confesso was taken then against him, on 23d of April, 1853, and a final decree on 27th June, 1854. Said decree directs payment to your petitioner, of 7,266$\frac{33}{100}$ dollars, by said Perin, and gives six months for payment thereof; and on his failure to pay at that term, the alleged right of redemption of said Perin shall be forever barred. But if paid in time, then petitioner was required to convey to Perin, the estate in said bill described. Petitioner declares said money was not so paid to him as by said decree directed, and that he never had notice of said decree, till in Jan'y last, and after said time had expired. Petitioner on examination of said proceedings is now further advised, that after said term of Court had passed away, at which said final decree was rendered, to wit, on 26th Dec'br, 1854, this honorable Court, at the instance of said Perin, and on an exparte motion, extended the operation of said final decree, by giving to Perin three months more in which to pay the amount directed by said decree.

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Petitioner saith he has, as advised and believes, a full, complete, and meritorious defence to all the matters charged by said Perin in his bill against him, and all which grounds of defence were well known to Perin when he took said *said* bill, as confessed against him. And petitioner never intended to forbear or neglect defence, but was misled and deceived by the conversations and professions of said Perin, in impressing petitioner with the conviction, said bill was abandoned and to be dismissed.

Petitioner avers he did not loan the money to said Perin as in said bill set forth; and did not purchase said lands and lawsuit set forth, and shown with said bill in the act of sale of Fletcher's heirs to petitioner in trust for said Perin, or any one else.

Said Perin had married the niece of petitioner, and he, said Perin, being frequently necessitated for money, petitioner, from his love and affection for Perin's wife and children, and with kind feelings for said Perin, did occasionally and from time to time relieve said Perin, by payments and advances in his behalf.

Petitioner was reluctant to purchase the said claim of Fletcher's heirs, but assured by Perrin, their counsel, that they were earnest to sell, and that in his opinion, the sale would prove profitable to the purchaser, he at last consented, and bo't for $10,000. Of this sum, Perrin was entitled to half by contract with Fletcher's heirs, for his fees. Two drafts for $5050 each were drawn on petitioner for the purchase-money. One of these, the Fletchers' passed over to Perin for his fees, and the other, the Fletchers' received payment of from petitioner. Petitioner having advanced money to Perin previously on his contract fee, and then holding it in pledge, Perin to the extent and value of said draft of $5050, did give up to petitioner the said draft as previously paid, and which petitioner avers, was then more than paid, and Perin still his debtor. But petitioner avers, that then believing his purchase a much better bargain than it has proved to be, in consquence of its litigation not yet ended, he did voluntarily, and without previous contract or engagement so to do, proffer to said Perin and to his wife, to bind himself to turn over to use of Mrs. Perin, the half amount for which he might sell said claim, deducting therefrom, an amount of between $7000 and $8000 cash, paid.

Two bonds were successively drawn by said Perin, to express the obligations of this promise. The form of these obligations, and the manner of their execution, were wholly advised and directed by his professional skill, and to promote, in accordance with his wishes, the interest of his family, and thereby his own. The whole tenor of these obligations were utterly imcompatible with the pretended trust set forth in his said bill.

Before petitioner purchased from Fletcher's heirs, said Perin had given to one Mott, an assignment or lien for a $\frac{1}{2}$ of his contingent fee in the case of Fletcher's heirs *v.* Davenport. After said purchase

Mott sued petitioner in your honorable Court for this claim, and obtained judgment; which claim petitioner has paid and satisfied, to the amount of about $2000. Of this claim and your petitioner's payment, said Perin knew all about, when he obtained said decree, pro confesso, yet disclosed nothing of it in said bill. In that case, said Perin gave the deposition herewith shown, as part of this petition, marked (A), being a copy certified, and by which it is seen he then testified your petitioner was the real purchaser from Fletcher's heirs, and not said Perin, as he subsequently set forth in his bill.

Petitioner further shows, that said Perin, with unaccountable capriciousness of conduct, after having negotiated with Fletcher's heirs, for the purchase by your petitioner of their claim and lawsuit in his hands, and after receiving half the price therefor, as aforesaid, instituted a suit in the State District Court, of East Baton Rouge, against your petitioner on the ground of Lesion, and thereby sought as the actual or assumed attorney of Fletcher's heirs, to set aside their sale to your petitioner, and have them restored to their previous title. This suit, said Perin, prosecuted in the Supreme Court of the State, and lost the same, as will appear by 7 vol. An. Rep., p. 178. The prosecution of this case is not disclosed in said bill, and the total contradiction is thereby made apparent, that at the time he filed said bill against petitioner claiming said lands as his own, he was prosecuting the same claim against petitioner in the State Court, as attorney for Fletcher's heirs, asserting the same right and title to be justly theirs; and charging your petitioner with having wronged and defrauded them of their title by the purchase aforesaid, which purchase in his said bill, he avers was made by himself, and for his own use. By these and other facts, petitioner saith can fully disprove the imputed trust, if permitted to file his answer, and make defence. And he shows also, that if said trust were rightfully established against him, yet before said Perin should be permitted to redeem, he should pay and satisfy all his indebtedness to petitioner, amounting in all, including the money paid out in this purchase with interest thereon, to about the sum of $28,000, as per account herewith, marked B.

Petitioner therefore prays, that said order of extension, made in this Court on 26th of December last, be set aside as inconsiderately granted without notice to your petitioner, and after the term of Court had transpired at which said final decree was made.

Also, that said final decree of 27th June, A. D. 1854, be set aside, and leave given your petitioner, within a reasonable time, to be assigned to answer said bill, if said Court shall consider this application in time. And petitioner represents that he is advised and believes said final decree of 27th June last is erroneous, null, and void, for this, to wit:

That the record shows the complainant, Perin, was the attorney of Fletcher's heirs for the due prosecution of said case, at the time

when by his said bill he assumes to have purchased of his clients their rights in controversy, which then were, and for years since continued to be, a litigious right, and for which cause said alleged sale was and is an absolute nullity by the laws of Louisiana. He is advised too, that for the same, and because of the subsisting relations of attorney and client, said alleged purchase was void in equity.

If, therefore, his application to set aside said decree and order of extension be overruled, then, to correct such errors in the original decree, and this Court's order in overruling his application to set aside said decree and order, petitioner prays an appeal on the whole case to the next December Term of the Supreme Court, United States, and that citation be awarded and directed to said Perin, to appear and answer said appeal.

JOHN HENDERSON,
Sol. for Petitioner.

Personally appeared before me the undersigned commissioner, the petitioner, Charles McMicken, who, being duly sworn, says that the statements and allegations made in this petition are true to the best of his knowledge and belief.

C. McMICKEN.

Sworn to and subscribed before me, this 12th day of February, 1855.

J. W. GURLEY,
U. S. Commissioner.

Deposition of F. Perin. Exhibit A, filed with Petition.

Be it remembered, that on this second day of January, 1850, personally came and appeared before me, the undersigned Commissioner of the United States, in and for the Eastern District of Louisiana, at my office, in the City of New Orleans, Franklin Perin, a person of sound mind, and lawful age, a witness on behalf of complainant, in a certain suit pending in the Circuit Court of the United States, in and for the Fifth Circuit and Eastern District of Louisiana, wherein Robert Mott is complainant, and Charles McMicken is defendant, known as number 1800 of the docket of said Court, who being by me first duly cautioned, examined, and sworn to testify to the truth, the whole truth, and nothing but the truth, did, in reply to the interrogatories which were propounded to him, depose as follows:

Question. What is your age, residence, and occupation?

Answer. I am upwards of thirty-three years of age; reside in East Baton Rouge; I am planting; I know the parties to this suit; the defendant resides in Cincinnati.

Question. Look upon the papers marked A, and state whose signature is thereto, by whom said instrument was written, and when?

Answer. It was signed by myself; it was written by Robert Mott,

the complainant, and was written on the day it bears date; I received the thousand dollars mentioned in that transfer marked A.

Question. Look upon document marked B, herewith filed, and state in whose handwriting it is, and whose is the signature thereto.

Answer. It is wholly written and signed by myself, and was delivered to Mr. Robert Mott by me, on the same day it bears date.

Question. Look upon Exhibit C, and state in whose handwriting it is, and by whom it is signed?

Answer. The first part is in Mr. Mott's handwriting, and the second part is in my own, and is signed by myself, and was delivered to Mr. Mott by me.

Question. What was the result of the suit No. 1320, in the U. S. Circuit Court, mentioned in Exhibit A?

Answer. The plaintiffs gained a judgment; they recovered the land sued for in the petition. This judgment was rendered about the 23d day of June, 1848.

Question. Who is now in the possession of the said land?

Answer. The defendant is in possession of it; I live upon it; I moved upon said land in the latter part of October, 1848; the defendant has never lived there.

Question. Where do the complainants, in suit No. 1320, referred to in document A, reside?

Answer. Some of them reside in Vera Cruz, Jalisco, in Mexico; and one of them, Maria Antonio, resides in Spain. These persons had an agent in this city, in the year 1846, until Arrangoez, the Mexican Consul, left this city on account of the war. Afterwards, O. L. Ablestein was appointed agent.

Question. After the time of the recovery of the judgment rendered in suit No. 1320, referred to in Exhibit A, did you see either of the parties plaintiff in that suit? If yea, where did you see them, and when, and which of them?

Answer. I did not see any of them. Mr. Carall came to New Orleans after Mr. Dablestein had sold the property to Mr. McMicken; I saw him.

Question. Have you at any time seen any of the parties plaintiff referred to in Exhibit A? if yea, which of them, and where?

Answer. I saw Felicity in the fall of 1844, in New Orleans, and Thomas Carall, who represented Maria Antonia.

Question. At what time did Mr. McMicken acquire the title which he claims to possess, to the plantation in question, which is the subject of the suit No. 1320?

Answer. On the nineteenth of October, 1848; he acquired it from Dablestein, the agent of the plaintiff.

Question. What did he pay for it?

Answer. He took up two drafts of five thousand dollars each (mentioned in the act of transfer to him), one was held by Dablestein, as the agent of the parties, to whom he paid five thousand dollars and

interest, in cash; the other was held by myself, and he paid the same to me by account of monies which he had advanced and loaned to me, prior to the date of that transfer. He paid me no money at this time. The draft was delivered up to him (Mr. McMicken), in January or February, 1849; I cannot recollect the exact date at which it was delivered; the bill is in the hands of Mr. McMicken, and, I think, a note was made on it of the date. The draft held by Dablesteen was taken up about the same time, or a little before.

Question. What is the probable value of the land recovered in suit No. 1320, specified in document A, and now held by Mr. McMicken?

Answer. Forty-five thousand dollars.

Question. Who enjoys the revenues of that property?

Answer. After the purchase by Mr. McMicken, he gave me the revenues for the first year—say the year 1849.

Question. At the time the transfer was made by Dablesteen to Mr. McMicken, was the latter aware of the purchase being made in his name?

Answer. He was not; I had had conversations with Mr. McMicken as to the purchase of this property, but had no direct power of attorney to make the purchase at that time.

Question. Did you not tell the plaintiff, before Mr. McMicken ratified the sale, that Mr. McMicken was not in New Orleans, but when he came the sale would be carried out, or something to that effect?

Objected to by the defendant, on the ground that it is an attempt to prove conversations held not in the presence of defendant, and not affecting him.

Answer. I do not remember; but it is very probable I might have told him; upon reflection, I remember the fact.

Question. In the same conversation, did not the plaintiff caution you not to deliver up the draft held by you, for five thousand dollars, to Mr. McMicken, until the amount was paid or the plaintiff's interest in the land was provided for?

Objected to on the ground that the party is not permitted to give evidence of his own declarations out of the presence of the defendant.

Answer. He did.

Question. Did you not tell him that you would not deliver up the said draft to Mr. McMicken until the interest of the complainant in the land was provided for?

Objected to on the same ground as above.

Answer. I promised not to deliver up the draft until Mr. McMicken had made some promise to arrange the plaintiff's claim.

Question. In the same conversation, or about the same time, was it not understood between the complainant and yourself, that the complainant's interest should be passed to Mr. McMicken, at fifteen hundred dollars?

Same objection as above.

Answer. It was.

Question. Did you make the arrangement with Mr. McMicken to provide for the interest of complainant, as you agreed to?

Answer. Before giving up the draft to Mr. McMicken I stated, that rather than have any difference with Mr. Mott, I had agreed to pay him fifteen hundred dollars, and felt, bound to have that paid; Mr. McMicken said he would pay him one thousand dollars with interest, as that was as much as he thought he was entitled to under the agreement; I mean the agreement of the transfer to Mott, and marked A; I told Mr. McMicken that if he would pay the one thousand with interest, I would myself settle the balance with Mr. Mott up to fifteen hundred dollars; I thought this arrangement would satisfy Mr. Mott, and gave up the draft.

Question. Did you give Mr. McMicken notice of the interest of the complainant, in connection with the information of your having purchased the land in his name?

Answer. I informed Mr. McMicken of the transfer of one-fifth of my interest in the case before he accepted the sale.

Question. Did you not procure a power of attorney from compl't, in the fall of 1848, to enable you to sell this one-fifth?

Answer. I have an indistinct recollection that Mr. Mott, comp't, gave me a power to dispose of his interest in said suit, provided it was not less than fifteen hundred dollars.

Complainant here called upon witness to produce the power of attorney above referred to, who promises that he will do so if he can find it.

Question. Have you acted as Mr. McMicken's agent in regard to the property since his purchase of it?

Answer. I did for the year 1849, as to the cultivation and management of it; my power ceased the last year.

Question. Were the two drafts, of five thousand dollars each, given for the purchase of the property, protested when first presented to Mr. McMicken, or were they both paid on presentation?

Answer. I think they were protested for non-acceptance, and also for non-payment—and when the drafts were returned to New Orleans, I proposed to Mr. Dablesteen and Mr. Carall, the agents of the Fletchers, to cancel the sale, or treat it as a nullity, and look out for another purchaser. They said they would rather wait until Mr. McMicken came down, to see whether he would not ratify the sale, and pay the drafts. When Mr. McMicken arrived he took up the drafts, and ratified the sale.

Question. Was not Mr. McMicken well aware that you were one-half interested in the land recovered for the Fletchers?

Answer. Mr. McMicken was acquainted with the power of attorney and agreement made with Arranguez in 1844, marked D, and filed as part of this answer.

3245

Question. Did not the draft of five thousand dollars held by you represent that interest?

Answer. It did.

F. PERIN.

Sworn to and subscribed before me, at New Orleans, this 2d January, 1850.

[SEAL.] J. W. GURLEY,
U. S. Commr. Eastern District of La.

State of Louisiana, Parish of Orleans, City of New Orleans, *ss.*

I, John W. Gurley, a commissioner duly appointed on the 24th day of April, 1849, by the Honorable, the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the several acts of Congress, in relation to the appointment, powers, and duties commissioners, do hereby certify, that on the second day of January, A. D. 1850, I was attended at my office, in the city of New Orleans, by the said witness, Franklin Perin, who being of sound mind and lawful age, was by me carefully examined, and cautioned, and sworn, to testify the whole truth, and his deposition having been by me reduced to writing in the presence of the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing it up and directing the same with my own hand to the Court for which the same was taken. And I do further certify, that the defendant, Charles McMicken, was present in my office during the examination of the said witness, and was by me informed of his right to cross-examine the said witness, if he should think proper so to do. And I further certify, that the objections noted to the several interrogatories propounded by complainant were made by the said witness himself on behalf of the defendant.

And I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this tenth day of January, 1850, and of the Independence of the United States the seventy-fourth.

[SEAL.] J. W. GURLEY,
U. S. Commr. Eastern District of La.

The foregoing endorsed: United States Circuit Court, Robert Mott *v.* Charles McMicken. No. 1800. Deposition of F. Perin, Esq., filed 11th January, 1850, and opened by consent, and filed 23d January, 1850. J. W. Gurley, Clerk.

Same objection as above.

Answer. It was.

Question. Did you make the arrangement with Mr. McMicken to provide for the interest of complainant, as you agreed to?

Answer. Before giving up the draft to Mr. McMicken I stated, that rather than have any difference with Mr. Mott, I had agreed to pay him fifteen hundred dollars, and felt, bound to have that paid; Mr. McMicken said he would pay him one thousand dollars with interest, as that was as much as he thought he was entitled to under the agreement; I mean the agreement of the transfer to Mott, and marked A; I told Mr. McMicken that if he would pay the one thousand with interest, I would myself settle the balance with Mr. Mott up to fifteen hundred dollars; I thought this arrangement would satisfy Mr. Mott, and gave up the draft.

Question. Did you give Mr. McMicken notice of the interest of the complainant, in connection with the information of your having purchased the land in his name?

Answer. I informed Mr. McMicken of the transfer of one-fifth of my interest in the case before he accepted the sale.

Question. Did you not procure a power of attorney from compl't, in the fall of 1848, to enable you to sell this one-fifth?

Answer. I have an indistinct recollection that Mr. Mott, comp't, gave me a power to dispose of his interest in said suit, provided it was not less than fifteen hundred dollars.

Complainant here called upon witness to produce the power of attorney above referred to, who promises that he will do so if he can find it.

Question. Have you acted as Mr. McMicken's agent in regard to the property since his purchase of it?

Answer. I did for the year 1849, as to the cultivation and management of it; my power ceased the last year.

Question. Were the two drafts, of five thousand dollars each, given for the purchase of the property, protested when first presented to Mr. McMicken, or were they both paid on presentation?

Answer. I think they were protested for non-acceptance, and also for non-payment—and when the drafts were returned to New Orleans, I proposed to Mr. Dablesteen and Mr. Carall, the agents of the Fletchers, to cancel the sale, or treat it as a nullity, and look out for another purchaser. They said they would rather wait until Mr. McMicken came down, to see whether he would not ratify the sale, and pay the drafts. When Mr. McMicken arrived he took up the drafts, and ratified the sale.

Question. Was not Mr. McMicken well aware that you were one-half interested in the land recovered for the Fletchers?

Answer. Mr. McMicken was acquainted with the power of attorney and agreement made with Arranguez in 1844, marked D, and filed as part of this answer.

Question. Did not the draft of five thousand dollars held by you represent that interest?

Answer. It did.

F. PERIN.

Sworn to and subscribed before me, at New Orleans, this 2d January, 1850.

[SEAL.] J. W. GURLEY,
U. S. Commr. Eastern District of La.

State of Louisiana, Parish of Orleans, City of New Orleans, *ss.*

I, John W. Gurley, a commissioner duly appointed on the 24th day of April, 1849, by the Honorable, the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, under and by virtue of the several acts of Congress, in relation to the appointment, powers, and duties commissioners, do hereby certify, that on the second day of January, A. D. 1850, I was attended at my office, in the city of New Orleans, by the said witness, Franklin Perin, who being of sound mind and lawful age, was by me carefully examined, and cautioned, and sworn, to testify the whole truth, and his deposition having been by me reduced to writing in the presence of the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing it up and directing the same with my own hand to the Court for which the same was taken. And I do further certify, that the defendant, Charles McMicken, was present in my office during the examination of the said witness, and was by me informed of his right to cross-examine the said witness, if he should think proper so to do. And I further certify, that the objections noted to the several interrogatories propounded by complainant were made by the said witness himself on behalf of the defendant.

And I further certify, that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this tenth day of January, 1850, and of the Independence of the United States the seventy-fourth.

[SEAL.] J. W. GURLEY,
U. S. Commr. Eastern District of La.

The foregoing endorsed: United States Circuit Court, Robert Mott *v.* Charles McMicken. No. 1800. Deposition of F. Perin, Esq., filed 11th January, 1850, and opened by consent, and filed 23d January, 1850. J. W. Gurley, Clerk.

Exhibit A, Referred to in Deposition.

Filed and offered by compl't 2d January, 1850.
(Signed) J. W. GURLEY,
U. S. Comm'r.

For and in consideration of one thousand dollars this day paid me by Robert Mott, I hereby transfer to him one-fifth of my interest in the claim now in suit, in the United States Circuit Court, for the Fifth Circuit, District of Louisiana, No. 1320, on the docket thereof, viz.: F. Fletcher et al. *v.* John Davenport et al., being one-tenth of the whole claim as per agreement with the plaintiff.

NEW ORLEANS, 7th March, 1848.

(Signed) F. PERIN.

Exhibit B.

Referred to in deposition, and offered and filed by complainant, 2d January, 1850. (Signed), J. W. Gurley, U. S. Commissioner, and being Power of attorney from Perin to R. Mott.

Know all men by the presents, that whereas, Feliciti Fletcher, Maria Antonia Fletcher, Augustin Cuesta, Javierra Cuesta, and Felicity Cuesta y Fletcher, by their agent and attorney in fact, Francisco de Arranguez, on the twenty-eighth day of Nov. 1844, employed me to prosecute and recover all their claims to lands and rights growing out of the same, in conjunction with P. Soule, Esq., except for the Cavellier and Davenport Plantation, in East Baton Rouge, which power was deposited in the office of Herman Lucas, a Notary Public for the City of New Orleans, on the first day of May, 1848.

And whereas, I have instituted suit in the United States Circuit Court, for the District of Louisiana, against John Davenport, and now have the said suit under my exclusive management and control.

Now therefore, know ye, that in case of my death or absence at any term of said Court, when the case may be tried, I hereby nominate and constitute Robert Mott, Esq., attorney-at-law and agent in fact to prosecute said suit, and otherwise manage it, as I might or could do if present, always reserving the right of S. S. Prentiss, Esq., to assist in the trial of said cause, by a former engagement with him.

Witness my hand, this March 7th, 1848.

F. PERIN.

Exhibit C.

Referred to in deposition, and offered and filed by complainant, 2d January, 1850. (Signed), J. W. Gurley.

MR. CHARLES MCMICKEN,

To ROBERT MOTT, Dr.

To my proportion of the estate of Fletcher's heirs being assumed by the purchase by you, say $1500.

NEW ORLEANS, 9th January, 1849.

The above amount of fifteen hundred dollars, I have agreed to pay to R. Mott, Esq., upon his return of my obligation which transferred to him one-fifth of my interest in the Davenport suit.

F. PERIN.

NEW ORLEANS, 9th January, 1849.

United States Circuit Court, Eastern District of Louisiana.

Clerk's Office.

I do hereby certify the foregoing fourteen pages, to contain true copies of the original on file in this office.

In faith whereof I have hereunto set my hand, and affixed the seal of said Court, at the City of New Orleans, this 12th day of February, 1855.

[SEAL.]

J. W. GURLEY,
Clerk.

F. C. LAVILLE,
Deputy Clerk.

Exhibit B, Filed with Petition.

Statement of money advanced to the heirs of Fletcher, and to Franklin Perin, for the purchase of the Davenport place, and other advances to Franklin Perin, and advances for attorney's fees, costs of court, and Sheriff's costs, and other expenses attending lawsuits, against and connected with said land, &c., with 8 per cent. per annum interest, up to the 15th February, 1855.

1848.	Amount of purchase-money for the place, see deed dated October 19th, 1848, $10,000. One half paid the heirs of Fletcher, through their agent, Mr. Dablestein, the Mexican Consul, as per drawn on me for, ...	$5,050
1850.	Interest on this sum to date at 8 per cent. is, ...	2,536 66
March 5.	Amount paid Franklin Perin, being one-half of the purchase-money, $5,050, as per draft, which sum is included in my bond to his wife, Mary Perin, with other money advanced to him. See bond dated March 5th, 1850, for, ...	7,780

Interest on this sum as per bond 5 years less 18 days, ...		$3,052 37
Amount of money collected by Franklin Perin as per his statement for house-rent, and rent of lots and negro hire, not included in the above-mentioned bond, ...		3,225
Interest on this sum, up to February 15, 1855, is, ...		1,551 58
Aug. 13. Paid Robert Y. Charmburg draft on me, for the amount of judgment and costs in the suit of Robert Mott against me, for a debt of F. Perin, . .	$1,827 40	
Also R. Y. Charmburg, commission, postage, &c., ...	46 61	
		1,874 01
Interest on this sum 4 years, 6 mo. 2 days, ...		675 47
C. McMicken *v.* Davenport, et als. for the partition of the Davenport tract of land, paid costs of Court, referees, and surveyor fees, amounting to, . .		366 46
Interest on the several payments is,		122 51
Paid Randolf and Moies, attorney, three suits, ...		480
Interest on the several payments is, ...		190 52
Paid James M. Brunot, attorney at Baton Rouge, ...		710
Interest on payment made him, .		192 70
Paid expenses twice from Cincinnati to Baton Rouge and New Orleans, to appeal and obtain an injunction to prevent the sale of the place, is, . .		138 75
Interest on the sums so expended, .		36 42
Fletcher's heirs *v.* Davenport, et als. paid attorney and other expenses arising out of the Writ of Error, taken by C. Davenport, et als. to the Supreme Court of the United States, for December Term, 1853, was, ...		328 70
Interest on the sums so paid, is, .		23 56
Amount of costs of courts, and sheriff's costs in several suits at Baton Rouge, by injunctions and otherwise,		
Amount carried forward, . .		$

the bills receipted not now being at hand, but supposed to be about, .	$550 00
Interest on this sum, say one year, .	44
Costs paid going to Baton Rouge from New Orleans, to have a protest made respecting said land, . . .	32
Interest on this sum 11 months, .	2 34
	$28,891 05

In addition to the above, there is judgment liens on said land with some costs, the amount as yet I have not ascertained.

Also a suit has been instituted, on the 3d of this month, against me, by one James N. Brown, for $2,400, for revenues he claims from said land, through some transaction he has had with said Franklin Perin.

NEW ORLEANS, February 12th, 1855.

C. McMICKEN.

FRANKLIN PERRIN *v.* CHARLES McMICKEN. } 2003. U. S. Circuit Court of the In February, A. D. 1855.

Affidavit, Filed February 12th, 1855.

I, Charles McMicken, being duly sworn, depose and say, that I have seen and read the affidavit filed in the papers of this case, purporting to have been made by Solomon Langdon before Samuel S. Carpenter, a U. S. Commissioner at Cincinnati, Ohio, on 7th of Oct'r, 1854, in which said Langdon deposes, that on 6th of Oct., 1854, at said Cincinnati, and on account of said Franklin Perrin, he "did then and there make a lawful tender to the said McMicken, of the sum aforesaid (viz., $7,436), on account of said Perrin, and at the same time and place last aforesaid, where the said tender was made, affiant delivered to said McMicken, the original paper or writing, of which the foregoing letter of said Perrin to said McMicken, is a literal and true copy, &c.

Now I, the said Charles McMicken, do declare and affirm, that said Langdon did not at that time, or at any other time, tender to me said sum of money, or any sum of money whatever.

That said Langdon did at that time deliver to this affiant the letter referred, to, but at the same time did expressly say, that he, Langdon, had no money with him, or had brought no money with him, but added, you know I am good for it. And by what was so spoken affiant did understand that if he, affiant, would accept the sum described in Perrin's said letter, that he, Langdon, would stand good for it, or would pay it. But Langdon proffered no money of any

sort, and offered no written promise to bind him to pay the money for said Perrin. And this affiant expressly declares Perrin or Langdon, then, or at any other time, never served defendant with copy of the decree in this case, or gave him even verbal notice of said decree, and affiant knew nothing of said decree having been made, till 24th Jan'y, 1855.

And affiant did not assent to said Langdon's assertions, that he was good for said sum of $7,436, and does not now believe he was good and responsible; and affiant would not have taken his promise for said sum, even had he incurred a legal obligation to pay, which he did not.

C. McMICKEN.

Sworn to and subscribed before me, at New Orleans, this 12th February, 1855.

J. W. GURLEY,
Clerk.

Minutes; November Term, 1854.

NEW ORLEANS, Monday, 12 February, 1855.

Present: Hon. T. H. McCaleb, District Judge.

FRANKLIN PERIN
v.
CHARLES McMICKEN. } 2003.

Rule to set aside Decree, and for leave to Answer, &c.

On motion of John Henderson, Esq., of counsel for the defendant, Charles McMicken, it is ordered that the complainant, Franklin Perin, do show cause, on Thursday next, the 15th instant, at 10 o'clock, A.M., why the final decree rendered in this cause on the 27th day of June, 1854, and the order of this Court extending said decree, made on the 26th day of December, 1854, be not set aside, and the defendant, Charles McMicken, be permitted to answer the merits of the bill, for the reasons shown by said defendant in his petition this day filed.

Minutes; November Term, 1854.

NEW ORLEANS, Thursday, 15 February, 1855.

Present: Hon. T. H. McCaleb, District Judge.

FRANKLIN PERIN
v.
CHARLES McMICKEN. } 2003.

Submission of Rule.

The rule herein taken by the defendant, on the 12th instant, having been assigned for this day, was called for trial; and after ar-

gument of John Henderson, Esq., for plaintiff in rule, and of J. M. Smiley, Esq., for the defendant in rule, was submitted to the Court, and taken under advisement.

Minutes; November Term, A. D. 1854.

New Orleans, Friday, 16th February, 1855.

Present: Hon. T. H. McCaleb, District Judge.

Franklin Perin
v.
Charles McMicken. } 2008.

Judgment on Rule.

The Court having considered the rule herein argued and submitted on yesterday, doth now order, that the order heretofore granted in this cause, on the 26th December last, extending the term of payment allowed the complainant by the final decree, be rescinded and annulled. And it is further ordered, that the application made in said rule to set aside the final decree of the Court, and for leave for the defendant, McMicken, to answer to the merits of the bill, be, and the same is refused and denied.

Franklin Perin
v.
Charles McMicken. }

Petition of Appeal. Filed 16 *February*, 1855.

Your petitioner, Charles McMicken, states, that on the 27th of June, 1854, a final decree, pro confesso, was taken against him in the above entitled case, and that on the 26th of December last, this Court made an order extending time to complain't, Perin, to make certain payments, which, by decree of June last, he was directed to make to defendant, McMicken. That McMicken, at the present term of Court, has filed a petition to open up said decree of June last, and have leave to answer. Also, to have the extension of said decree granted to Perin at this term of the Court set aside, and to have an appeal on the whole case if these requests be denied to him. A rule taken against Perin to show cause why both the decree and its extension should not be set aside, and def't, McMicken, be permitted to answer the bill having been heard by the Court, said Court has seen fit to order that said extension of the decree, granted in December last, be set aside; but that the application of said McMicken to open the decree of June last be overruled. Wherefore petitioner now prays an appeal to the Sup. Court of the U. S. at its next De-

cember term, from both the original decree, pro confesso, and of the order and decree of the Court overruling said McMicken's application to set aside said decree of June last, and to answer said bill on merits shown in his petition thereupon filed, also prays for citation to Perin to answer said appeal.

JOHN HENDERSON,
Sol. for McMicken.

Minutes; November Term, 1854.

New Orleans, Friday, 16 February, 1855.

Present: Hon. T. H. McCaleb, District Judge.

Franklin Perin
v.
Charles McMicken. } 2003.

Order granting Appeal.

On motion of John Henderson, Esq., of counsel for defendant, and on presenting and filing a petition on behalf of said defendant, praying an appeal to the next term of the Supreme Court of the United States, from the final decree rendered in this cause on the 27th of June, and signed on the 3d of July, 1854, and from the orders in his said petition of appeal mentioned, it is ordered that an appeal be allowed as prayed for, on defendant's giving bond with good and solvent security in the penal sum of five hundred dollars, conditioned according to law.

Appeal Bond. Filed 16 *Feb'y*, 1855.

Know all men by these presents, that we, Charles McMicken, as principal, and O. Carey, as surety, are held and firmly bound, jointly and severally, unto Franklin Perin, in the sum of five hundred dollars, dollars, lawful money of the United States of America, to be paid to the said Franklin Perin, his heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 16th day of February, in the year of our Lord eighteen hundred and fifty-five.

Whereas, Charles McMicken has this day presented a petition to the honorable the Circuit Court of the United States for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, praying an appeal to the Supreme Court of the United States from the orders and decrees rendered against him in the suit of Franklin Perin *v.* Charles McMicken, No. 2003 of the docket of the U. S.

Circuit Court, Eastern Dist. of L'a, on the 26 day of Dec'r, 1854, and on the 27th day of June, 1854, and on the 16 Feb'y, 1855, as set out in said petition. Now the condition of the above obligation is, that we, the above bounden Charles McMicken and O. Carey, will well and truly pay to the said Franklin Perin, the defendant in said suit, all such damages and costs as may be adjudged in his favor by the said Supreme Court.

CHARLES McMICKEN. [SEAL.]
O. CAREY. [SEAL.]

Approved,

THOS. H. McCALEB,
U. S. Judge.

Endorsed: Filed 16th February, 1855. J. W. Gurley, Clerk.

United States of America—Circuit Court of the United States: Fifth Circuit and Eastern District of Louisiana.

Clerk's Office.

I, John W. Gurley, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing seventy-four pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Franklin Perin *v.* Charles McMicken, No. 2003 of the Docket, so far as the same now remain of record or on file in said Court.

Witness my hand and the seal of said Court, at the city of New Orleans, this 3d day of March, A. D. 1855.

[SEAL.] J. W. GURLEY,
Clerk.

The United States of America: the President of the United States, to Franklin Perin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to a petition of appeal filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, and the order thereon granted allowing the same, wherein Charles McMicken is appellant or plaintiff in appeal, and you are defendant in appeal, to show cause, if any there be, why the decree and orders rendered against the said plaintiff in appeal as in said petition and order mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.